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EXAMINER
DANIEL JR, WILLIE J

ART UNIT	PAPER NUMBER
2617	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	09/882,759	MCALINDEN, PAUL
	Examiner	Art Unit	
	Willie J. Daniel, Jr.	2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 August 2007*.

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4,6-9,11,12,34,36 and 38-46* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4,6-9,11,12,34,36 and 38-46* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1. This action is in response to applicant's amendment filed on 14 August 2007. **Claims 1-2, 4,**

    6-9, 11-12, 34, 36, and **38-46** are now pending in the present application **claims 3, 5, 10, 13-**

    33, 35, and 37 have been canceled. This office action is made **Final.**

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

    > The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

    Claims 1 and 8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with

    the written description requirement. The claim(s) contains subject matter which was not

    described in the specification in such a way as to reasonably convey to one skilled in the

    relevant art that the inventor(s), at the time the application was filed, had possession of the

    claimed invention.

    a. Claim 1 recites the limitations "...**control unit** to execute the configuration

        application **to determine** whether **configuration** of the **portable device is**

        desired...based upon **detection of a problem** with the portable device **by the base**

        station..." in line(s) 5-8 of the claim.

    b. Claim 8 recites the limitations "...diagnosing a malfunction of a portable device with

        a **base station; determining** in the portable device **itself** if configuration of the

        portable device is desired based on diagnosing the malfunction..." in line(s) 2-4 of

        the claim.

Regarding **claims 1** and 8, the claim(s) include(s) a limitation(s) that is not supported

by the specification of the instant application as originally filed. The applicant on pg. 6, 1st

paragraph of remarks section states, "...amendments to claims may be found...Figs. 3 and

4..." as a cited area of support for the newly amended claimed limitation(s). Upon reviewing

the cited area and full description, the cited area does not support or convey the newly

amended claim limitation(s) as indicated in items 3a and 3b above. The applicant is advised

to review the subject matter of the specification (see pg. 7, lines 7-11; abstract), which at best

describes that the **portable device itself detects or determines a problem** as one

embodiment for (i.e., in other words there is no language of a base station). Also, the

specification (see pg. 7, lines 15-17) recites "...in **yet another embodiment**, the **base**

station 15 may **detect a problem**..." which is clearly another embodiment. Consequently,

the specification describes for step 420 at least **two separate embodiments** that function

separately and does not support the combined limitations of the current claim language.

Therefore, either the portable device detects a problem or the base station detects the

problem. Applicant is advised to clearly and concisely provide claim language that is

consistent and correlates to the specification and mindful not to improperly claim limitations

that are clearly not supported. In addition, the limitation "...base station..." was not

provided in the claims as originally filed. The Examiner respectfully requests the applicant

to provide page(s), line(s), and figure(s) of the instant application that supports the limitation

of the claim(s) and/or any supportive comment(s) to help clarify and resolve this issue(s).

In response to applicant's comments on pg. 6, 1st paragraph,

"...support...specification...page, 7, lines 6-9 and 15-17...", the Examiner respectfully

disagrees. The area cited as support speaks of multiple embodiments separately used. For

example, instant application pg. 7, lines 6-9 merely describes the portable device determines

if configuration is desired. Another example, instant application pg. 7, lines 15-17 basically

describes the base station detecting a problem with the portable device and the base station

determining that configuration is desired. Therefore, in view of the above, the 112 rejection

is hereby maintained.

3. Due to the new matter claim language provided in the response filed on 27 February 2007 as

opposed to the language of the instant application as originally filed, the Examiner has given

a reasonable interpretation of said language and the claims are rejected as broadest and best

interpreted.

4. This list of examples is not intended to be exhaustive. The Examiner respectfully requests

the applicant to review all claims and clarify the issues as listed above as well as any other

issue(s) that are not listed.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

Claims 1-2, 4, 6, 41-42, and **45** are rejected under 35 U.S.C. 103(a) as being unpatentable

over **Fette et al.** (hereinafter Fette) **(US 6,052,600)** in view of **Webster et al.** (hereinafter

Webster) **(US 6,449,493 B1), Kirkpatrick (US 5,933,776),** and **Imamatsu (US 6,687,901**

B1).

Regarding **claim 1,** Fette discloses a software programmable radio (200) which

hereinafter reads on the claimed "portable device" (see col. 4, lines 54-67; Figs. 1 and 2),

comprising:

a memory (206) which hereinafter reads on the claimed "storage unit" having a first

portion and second portion (see col. 4, lines 55-56; col. 5, lines 33-49,55-57; col. 6, line 21-

23,62-65; Fig. 2 "ref. 206"), where the memory has separate portions for storing information,

for example, the storage unit (206) has separate portions as shown in Fig. 2 "206";

a configuration application stored in the second portion (see col. 3, lines 52-57; col. 5,

lines 11-13,18-22,33-49,55-57; col. 6, line 21-23,62-65; Fig. 2 "ref. 206"); and

a controller (204) which hereinafter reads the claimed "control unit" communicatively

coupled to the storage unit (206) (see Fig. 2),

in response to an indication received from a base station (106) (see col. 4, lines 34-36;

Fig. 1), where radio receives the updates via the base station (106) in which an indication

would be inherent as evidenced by the fact that one of ordinary skill in the art would clearly

recognize,

based upon detection of a problem (200) with the portable device (see col. 8, line 54-57;

col. 8, line 64 - col. 9, line 19; Figs. 3 "ref. 314, 320", 4 "ref. 322, 324"), where the controller

(204) of the radio (200) tests the software by checking for problems,

request configuration information in response to verifying that configuration is desired by

a user of the portable device (see col. 3, lines 31-34, col. 4, lines 25-34; col. 7, lines 42-48;

Fig. 3),

establish a connection with a software distribution computer (SDC) (114) which

hereinafter reads on the claimed "remote device" coupled to the base station (106) (see col. 3,

lines 24-30; Fig. 1), and

receive the requested configuration information (see col. 4, lines 34-36), where the

mobile radio receives the requested software updates; and

store the requested configuration information in the first portion of the storage unit (206)

(see col. 5, lines 33-48, 55-57; col. 4, lines 27-35; Figs. 2 "ref. 206", 3, and 4), where the

controller stores the information (e.g., software programs, configuration/reconfiguration files,

waveforms, licenses) in portions of the storage unit. As a note, Fette discloses the SDC (114)

and server (110) recognizes which software updates the radio (200) needs (see col. 4, lines

27-35). Fette does not specifically disclose having the features the second portion

comprising a protected region; the control unit to execute the configuration application to

determine whether configuration of the portable device is desired based upon detection of a

problem by a base station. However, the examiner maintains that the features the second

portion comprising a protected region was well known in the art, as taught by Webster.

In the same field of endeavor, Webster discloses the feature the second portion

comprising a protected region (see col. 3, lines 12-15,44-50; col. 5, lines 46-54; Fig. 1 "ref.

32"), where the regions of the memory uses, for example, dealer programs or passwords to

protect against alterations.

Therefore, it would have been obvious to one of ordinary skill in the art at the time

the invention was made to combine the teachings of Fette and Webster to have the feature the

second portion comprising a protected region, in order to make operation of the portable or

mobile radio simple, as taught by Webster (see col. 1, lines 38-42). The combination of Fette

and Webster does not specifically disclose having the feature the control unit to execute the

configuration application to determine whether configuration of the portable device is desired

in response to an indication received from a base station based upon detection of a problem

with the portable device by the base station. However, the examiner maintains that the

feature based upon detection of a problem with the portable device by the base station was

well known in the art, as taught by Kirkpatrick.

Kirkpatrick further discloses the feature based upon detection of a problem with the

portable device (e.g., cellular telephone) by the base station (14) (see col. 5, lines 1-7,9-16),

where the base station includes a test device for determine faults of a cellular telephone.

Therefore, it would have been obvious to one of ordinary skill in the art at the time

the invention was made to combine the teachings of Fette, Webster, and Kirkpatrick to have

the feature based upon detection of a problem with the portable device by the base station, in

order to provide a method and apparatus by a cellular telephone is tested in-service in the

field, as taught by Kirkpatrick (see col. 1, lines 64-68).   The combination of Fette, Webster,

and Kirkpatrick does not specifically disclose having the feature the control unit to execute

the configuration application to determine whether configuration of the portable device is

desired in response to an indication received from a base station based upon detection of a

problem with the portable device by the base station. However, the examiner maintains that

the feature the control unit to execute the configuration application to determine whether

configuration of the portable device is desired in response to an indication received from a

base station based upon detection of a problem with the portable device by the base station

was well known in the art, as taught by Imamatsu.

In the same field of endeavor, Imamatsu discloses the feature the CPU (22) which

reads on the claimed "control unit" to execute the configuration application to determine

whether configuration of the mobile terminal device (10) which reads on the claimed

"portable device" is desired in response to an indication received from a base station (103)

based upon detection of a problem with the portable device by the base station (103) (see col.

4, lines 10-17,43-47; col. 9, lines 40-48; col. 12, lines 38-45; Figs. 2-3 and 4), where the

software-supply device (50) via the base station (103) determines the mobile device (10)

does not have the latest software version in which where the software supply device

determines whether an update is necessary and transmits the software via the base station

(103) to the mobile terminal (10) for an upgrade (see col. 4, lines 21-25; col. 9, lines 6-12,40-

48,52-56; col. 8, lines 1-8,19-22; Figs. 2-3 and 7-8).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Webster, Kirkpatrick, and Imamatsu to have the feature the control unit to execute the configuration application to determine whether configuration of the portable device is desired in response to an indication received from a base station based upon detection of a problem with the portable device by the base station, in order to update software efficiently and safely with a simple structure and control in a radio terminal device, as taught by Imamatsu (see col. 2, lines 10-14).

Regarding **claim 2**, the combination of Fette, Webster, Kirkpatrick, and Imamatsu discloses every limitation claimed, as applied above (see claim 1), in addition Fette further discloses the portable (200) device of claim 1, wherein the control unit (204) to further initialize the portable device (200) using at least a portion of the configuration information (see col. 5, lines 5-13; col. 6, lines 58-65; col. 7, lines 5-9), where the controller configures the portable device with the update information.

Regarding **claim 4**, the combination of Fette, Webster, Kirkpatrick, and Imamatsu discloses every limitation claimed, as applied above (see claim 1), in addition Fette further discloses the portable device (200) of claim 1, wherein the control unit (204) to establish a communication link (105) with the software distribution computer (SDC) (114) which hereinafter reads on the claimed "remote device" to receive the configuration information (see col. 3, lines 28-41; Fig. 1), where the portable device establishes a connection with the SDC via the base station to the server which is coupled to the SDC.

Regarding **claim 6**, the combination of Fette, Webster, Kirkpatrick, and Imamatsu discloses every limitation claimed, as applied above (see claim 1), in addition Fette further

discloses the portable device (200) of claim 1, wherein the control unit (204) to receive at

least one of an operating system, protocol stack layer, and application layer of the portable

device (200) (see col. 3, lines 40-57; col. 4, lines 25-36; col. 6, lines 24-65; Figs. 3 and 4),

where the portable device receives information for the operating software, communication

protocol, or an application.

Regarding **claim 41**, the combination of Fette, Webster, Kirkpatrick, and Imamatsu

discloses every limitation claimed, as applied above (see claim 4), in addition Fette further

discloses the portable device of claim 4, wherein the control unit (204) is to provide a radio

ID which reads on the claimed "unique electronic identifier" to the remote device (114) (see

col. 8, lines 3-14), where a unique radio ID is associated with the portable device for

identification of licenses and software.

Regarding **claim 42**, the combination of Fette, Webster, Kirkpatrick, and Imamatsu

discloses every limitation claimed, as applied above (see claim 41), in addition Fette further

discloses the portable device of claim 41, wherein the requested configuration information is

associated with the unique electronic identifier (see col. 5, lines 5-13; col. 6, lines 58-65; col.

7, lines 42-49; col. 8, lines 3-14), where the controller receives the requested information for

the portable device based on the associated radio ID.

Regarding **claim 45**, the combination of Fette Webster, and Kirkpatrick discloses

every limitation claimed as applied above in claim 1. The combination of Fette and Webster

does not specifically disclose having the feature wherein the control unit to further prompt a

user to couple the portable device to a battery charger prior to the request for the

configuration information. However, the examiner maintains that the feature wherein the

control unit to further prompt a user to couple the portable device to a battery charger prior to

the request for the configuration information was well known in the art, as taught by

Imamatsu.

Imamatsu further discloses the feature wherein the control unit (22) to further prompt

a user to couple the portable device to a battery charger prior to the request for the

configuration information (see col. 9, lines 12-30; Figs. 2-3 and 7-8), where the update is

performed according to the condition of the battery such as the mobile device (10) connected

to a charger.

Therefore, it would have been obvious to one of ordinary skill in the art at the time

the invention was made to combine the teachings of Fette, Webster, Kirkpatrick, and

Imamatsu to have the feature wherein the control unit to further prompt a user to couple the

portable device to a battery charger prior to the request for the configuration information, in

order to update software efficiently and safely with a simple structure and control in a radio

terminal device, as taught by Imamatsu (see col. 2, lines 10-14).

Claims 7, 34, and **44** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Fette et**

al. (hereinafter Fette) (**US 6,052,600**) in view of **Webster et al.** (hereinafter Webster) (**US**

6,449,493 B1), **Kirkpatrick (US 5,933,776)**, and **Imamatsu (US 6,687,901 B1)** as applied

to claim 1 above, and further in view of **Criss et al.** (hereinafter Criss) (**US 6,735,434 B2**).

Regarding **claim 7**, the combination of Fette, Webster, Kirkpatrick, and Imamatsu

discloses the limitations claimed, as applied above (see claim 1), in addition Fette further

discloses the portable device (200) of claim 1, wherein the control unit (204) is to determine

(see col. 8, lines 21-37; col. 9, lines 15-19; Figs. 3 "314" and 4 "322"), where the controller determines if the software upgrade is complete and correct. The combination of Fette, Webster, Kirkpatrick, and Imamatsu does not specifically disclose having the feature determine whether restoration of the portable device to a prior operational state is desired; and further wherein the configuration information includes reconfiguration information associated with the portable device in the prior operational state. However, the examiner maintains that the feature determine whether restoration of the portable device to a prior operational state is desired; and further wherein the configuration information includes reconfiguration information associated with the portable device in the prior operational state was well known in the art, as taught by Criss.

In the same field of endeavor, Criss discloses the feature determine whether restoration of the portable device to a prior operational state is desired (see col. 14, lines 58-62), where the portable terminal has the ability to use the old version when there is a problem with the new version; and

further wherein the configuration information includes reconfiguration information associated with the portable device in the prior operational state (see col. 14, lines 58-62), where the portable terminal has the ability to use the old version when there is a problem with the new version thereby allowing the portable terminal to rollback or revert to the old version.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Webster, Kirkpatrick, Imamatsu, and Criss to have the feature determine whether restoration of the portable device to a prior

operational state is desired; and further wherein the configuration information includes

reconfiguration information associated with the portable device in the prior operational state,

in order to have software upgrades that are wirelessly transmitted to a mobile device based

on a determination of whether such an upgrade is necessary, as taught by Criss (see col. 2,

lines 55-58).

Regarding **claim 34**, the combination of Fette, Webster, Kirkpatrick, and Imamatsu

discloses every limitation claimed, as applied above (see claim 1), in addition Fette further

discloses of the portable device of claim 1, wherein the control unit (204) to further visually

verify with a user that the configuration is desired (see col. 4, lines 30-35; col. 5, lines 21-23;

col. 7, lines 41-49; Fig. 4 "ref. 334"), where the user can accept or deny the software for

configuring the radio in which the visually would be inherent via a display(214) as evidenced

by the fact that one of ordinary skill in the art would clearly recognize. The combination of

Fette, Webster, Kirkpatrick, and Imamatsu does not specifically disclose having the feature

prior to the request for the configuration information. However, the examiner maintains that

the feature prior to the request for the configuration information was well known in the art, as

taught by Criss.

Criss further discloses the feature prior to the request for the configuration

information (see col. 17, lines 19-45; Fig. 11), where the user of the mobile terminal (36)

selects software packages which requests the available software.

Therefore, it would have been obvious to one of ordinary skill in the art at the time

the invention was made to combine the teachings of Fette, Webster, Kirkpatrick, Imamatsu,

and Criss to have the feature prior to the request for the configuration information, in order to

have software upgrades that are wirelessly transmitted to a mobile device based on a determination of whether such an upgrade is necessary, as taught by Criss (see col. 2, lines 55-58).

Regarding **claim 44**, the combination of Fette and Webster discloses every limitation claimed as applied above in claim 1. The combination of Fette and Webster does not specifically disclose having the feature wherein the control unit to execute the configuration application to verify that configuration of the portable device is desired based upon detection of a problem by a base station in response to a booting of the portable device. However, the examiner maintains that the feature configuration of the portable device is desired based upon detection of a problem by the base station was well known in the art, as taught by Kirkpatrick.

Kirkpatrick further discloses the feature configuration of the portable device (e.g., cellular telephone) is desired based upon detection of a problem by the base station (14) (see col. 5, lines 1-7,9-16), where the base station includes a test device for determine faults of a cellular telephone.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Webster, and Kirkpatrick to have the feature configuration of the portable device is desired based upon detection of a problem by the base station, in order to provide a method and apparatus by a cellular telephone is tested in-service in the field, as taught by Kirkpatrick (see col. 1, lines 64-68). The combination of Fette and Webster does not specifically disclose having the feature the control unit to execute the configuration application to determine whether configuration of

the portable device is desired in response to an indication received from a base station based upon detection of a problem with the portable device by the base station. However, the examiner maintains that the feature based upon detection of a problem with the portable device by the base station was well known in the art, as taught by Kirkpatrick. The combination of Fette, Webster, and Kirkpatrick does not specifically disclose having the feature wherein the control unit to execute the configuration application to verify that configuration of the portable device is desired based upon detection of a problem by the base station in response to a booting of the portable device. However, the examiner maintains that the feature wherein the control unit to execute the configuration application to verify that configuration of the portable device is desired based upon detection of the problem by the base station was well known in the art, as taught by Imamatsu.

Imamatsu discloses the feature wherein the CPU (22) which reads on the claimed "control unit" to execute the configuration application to verify that configuration of the mobile terminal device (10) which reads on the claimed "portable device" is desired based upon detection of the problem by the base station (103) (see col. 4, lines 10-17,43-47; col. 9, lines 40-48; col. 12, lines 38-45; Figs. 2-3 and 4), where the software-supply device (50) via the base station (103) determines mobile device (10) does not have the latest software version.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Webster, Kirkpatrick, and Imamatsu to have the feature wherein the control unit to execute the configuration application to verify that configuration of the portable device is desired based upon detection

of the problem by the base station, in order to update software efficiently and safely with a simple structure and control in a radio terminal device, as taught by Imamatsu (see col. 2, lines 10-14). The combination of Fette, Webster, Kirkpatrick, and Imamatsu does not specifically disclose having the feature in response to a booting of the portable device. However, the examiner maintains that the feature in response to a booting of the portable device was well known in the art, as taught by Criss.

Criss further discloses the feature in response to booting the portable device (see col. 6, lines 60-67; col. 7, lines 24-60; Figs. 1-2, 12), where the mobile terminal goes through a boot-up routing or initialization in which the host computer detects that the mobile terminal is using an older version of operating software and transmits a request via the base station to the mobile terminal for an upgrade.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Fette, Webster, Kirkpatrick, Imamatsu, and Criss to have the feature in response to booting the portable device, in order to have software upgrades that are wirelessly transmitted to a mobile device based on a determination of whether such an upgrade is necessary, as taught by Criss (see col. 2, lines 55-58).

Claims 8-9, 11-12, 36, 38-39, and **43** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Fette et al.** (hereinafter Fette) (**US 6,052,600**) in view of **Kirkpatrick (US 5,933,776), Moles et al.** (hereinafter Moles) (**US 2002/0072359 A1**), and **Criss et al.** (hereinafter Criss) (**US 6,735,434 B2**).

Regarding **claim 8**, Fette discloses a method, comprising:

diagnosing a malfunction of a portable device (200) (see col. 8, lines 29-38; col. 9, lines 11-20; col. 7, lines 18-25,42-49; col. 4, lines 27-35; Fig. 3 "ref. 303, 316, 324"), where the radio (200) fails to support an operation;

determining in the portable device if configuration of the portable device (200) is desired based on the determination diagnosing a malfunction (see col. 2, lines 34-45; col. 3, lines 31-41; col. 4, lines 25-36; col. 5, lines 18-21; col. 7, 42-49; Fig. 3), where the radio controller determines if new or updated information is available and request the information for configuring of the radio in which the software is received based upon the user request;

executing one or more instructions on the portable device (200) to receive configuration information in response to determining that configuration of the portable device (200) is desired by establishing a wireless connection with a remote device (114) coupled to the base station (106) (see col. 3, lines 24-41; col. 4, lines 25-44; 54-67; col. 7, lines 42-48; Figs. 1, 2, and 3), where the controller determines the need for new or updated software and request and receive the software,

transmitting a radio ID which hereinafter reads on the claimed "unique identifier" associated with the portable device (200) (see col. 8, lines 3-14), where a unique radio ID is associated with the portable device for identification of licenses and software, and

receiving configuration information from the remote device (114) associated with the unique identifier (see col. 5, lines 5-13; col. 6, lines 58-65; col. 7, lines 42-49; col. 8, lines 3-14), where the controller receives the requested information for the portable device based on the associated radio ID,

storing the received configuration information in the portable device (200) (see col. 5,

lines 33-41; Figs. 3 and 4), where the controller stores the information (e.g., software

programs, waveforms, licenses) in the storage unit. As a note, Fette discloses the SDC (114)

and server (110) recognizes which software updates the radio (200) needs (see col. 4, lines

27-35). Also, Fette further teaches the feature reconfiguring the portable device (200) to the

prior operational state (see col. 9, lines 14-20,50-51; Fig. 4 "ref. 324, 334, 336"), where the

return of the radio to a previous operable state would be inherent when test for the update

information (software) is unusable or when the user does not accept to software. Fette does

not specifically disclose having the features diagnosing a malfunction of a portable device

with a base station; determining in the portable device itself if configuration of the portable

device is desired based on diagnosing the malfunction; the configuration information

comprising reconfiguration information associated with the portable device in a previous

operational state; and reconfiguring the portable to the prior operational state. However, the

examiner maintains that the feature diagnosing a malfunction of the portable device with a

base station was well known in the art, as taught by Kirkpatrick.

Kirkpatrick further discloses the feature diagnosing a malfunction of the portable

device (e.g., cellular telephone) with a base station (14) (see col. 5, lines 1-7,9-16), where the

base station includes a test device for determine faults of a cellular telephone.

Therefore, it would have been obvious to one of ordinary skill in the art at the time

the invention was made to combine the teachings of Fette and Kirkpatrick to have the feature

diagnosing a malfunction of the portable device with a base station, in order to provide a

method and apparatus by a cellular telephone is tested in-service in the field, as taught by

Kirkpatrick (see col. 1, lines 64-68). The combination of Fette and Kirkpatrick does not

specifically disclose the feature determining in the portable device itself if configuration of

the portable device is desired based on the diagnosing the malfunction; the configuration

information comprising reconfiguration information associated with the portable device in a

previous operational state; and reconfiguring the portable to the prior operational state.

However, the examiner maintains that the feature determining in the portable device itself if

configuration of the portable device is desired based on the diagnosing the malfunction was

well known in the art, as taught by Moles.

In the same field of endeavor, Moles discloses the feature determining in the portable

device itself if configuration of the mobile station (112) which reads on the claimed "portable

device" is desired based on diagnosing the malfunction (see pg. 5, ¶ [0066], lines 13-16; pg.

6, ¶ [0068]; Fig. 5 "ref. 505"), where the MS (112) performs a diagnostic test and detects an

internal fault. As a note, Moles also further supports diagnosing a malfunction of a portable

device with a base station (101) (see pg. 4-5, ¶ [0055-0057]; Fig. 3), where the system has

the MS (112) communicate with the OTAMD server (160) via base station (101).

Therefore, it would have been obvious to one of ordinary skill in the art at the time

the invention was made to combine the teachings of Fette, Kirkpatrick, and Moles to have the

feature determining in the portable device itself if configuration of the portable device is

desired based on diagnosing the malfunction, in order to perform diagnostic operations on

wireless handsets and other types of mobile stations, as taught by Moles (see pg. 2, ¶ [0017]).

The combination of Fette, Kirkpatrick, and Moles does not specifically disclose having the

features the configuration information comprising reconfiguration information associated

with the portable device in a previous operational state; and reconfiguring the portable to the

prior operational state using reconfiguration information. However, the examiner maintains

that the features the configuration information comprising reconfiguration information

associated with the portable device in a previous operational state; and reconfiguring the

portable to the prior operational state using reconfiguration information was well known in

the art, as taught by Criss.

Criss further discloses the features the configuration information comprising

reconfiguration information associated with the portable device in a previous operational

state; and reconfiguring the portable to the prior operational state using reconfiguration

information (see col. 14, lines 58-62), where the portable terminal has the ability to use the

old version when there is a problem with the new version thereby allowing the portable

terminal to rollback or revert to the old version in which the portable device is reconfigured

to a previous operable state.

Therefore, it would have been obvious to one of ordinary skill in the art at the time

the invention was made to combine the teachings of Fette, Kirkpatrick, Moles, and Criss to

have the features the configuration information comprising reconfiguration information

associated with the portable device in a previous operational state; and reconfiguring the

portable to the prior operational state using reconfiguration information, in order to have

software upgrades that are wirelessly transmitted to a mobile device based on a determination

of whether such an upgrade is necessary, as taught by Criss (see col. 2, lines 55-58).

Regarding **claim 9**, the combination of Fette, Kirkpatrick, Moles, and Criss discloses

every limitation claimed, as applied above (see claim 8), in addition Fette further discloses

the method of claim 8, further comprising initializing the portable device (200) with at least a

portion of the received configuration information (see col. 5, lines 5-13; col. 6, lines 58-65;

col. 7, lines 5-9), where the controller configures the portable device with the update

information.

Regarding **claim 11**, the combination of Fette, Kirkpatrick, Moles, and Criss

discloses every limitation claimed, as applied above (see claim 8), in addition Fette further

discloses the method of claim 8, wherein determining if configuration is desired comprises

detecting an indication to reconfigure the portable device (see col. 2, lines 34-45; col. 4, lines

25-36; col. 7, lines 42-49), where the availability of new or updated software will indicate

that the portable device will be reconfigured in accordance to the latest software.

Regarding **claim 12**, the combination of Fette, Kirkpatrick, Moles, and Criss

discloses every limitation claimed, as applied above (see claim 8), in addition Fette further

discloses the method of claim 8, wherein storing the received configuration information

comprises storing at least one of an operating system, protocol stack, and application layer of

the portable device (see col. 3, lines 40-57; col. 4, lines 25-36; col. 5 lines 33-41; col. 6, lines

24-65; Figs. 3 and 4), where the portable device receives and stores information for the

operating software, communication protocol, or an application in the memory.

Regarding **claim 36**, the combination of Fette, Kirkpatrick, Moles, and Criss

discloses every limitation claimed, as applied above (see claim 8), in addition Fette further

discloses the method of claim 8, further comprising visually prompting a user to verify that

the configuration is desired (see col. 3, lines 31-50; col. 4, lines 30-35; col. 5, lines 21-23;

col. 7, lines 41-49; Fig. 4 "ref. 334"), where the user can request new or updated software

and accept or deny the software for configuring the radio in which the visually prompting

would be inherent via a display(214) as evidenced by the fact that one of ordinary skill in the

art would clearly recognize.

Regarding **claim 38**, the combination of Fette, Kirkpatrick, Moles, and Criss

discloses every limitation claimed, as applied above (see claim 11), in addition Fette further

discloses the method of claim 37, further comprising reconfiguring the portable device (200)

after an unsuccessful upgrade attempt (see col. 8, lines 24-31; col. 9, lines 14-20; Figs. 3 and

4 "ref. 322, 334, 336"), where the radio is unable to generate the operation of the information

(waveform) that has been received in which the reconfiguring would be inherent as

evidenced by the fact that one of ordinary skill in the art would clearly recognize.

Regarding **claim 39**, the combination of Fette, Kirkpatrick, and Moles discloses every

limitation claimed, as applied above (see claim 8), in addition Fette further discloses

regarding the malfunction (see col. 8, lines 29-38; col. 9, lines 11-20; Fig. 3 "ref. 316, 324"),

where the radio fails to support an operation. Also, Kirkpatrick discloses the base station

detecting a fault (see col. 5, lines 1-7). The combination of Fette, Kirkpatrick, and Moles

does not specifically disclose having the feature generating and transmitting an indication to

the portable device from the base station regarding the malfunction. However, the examiner

maintains that the feature generating and transmitting an indication to the portable device

from the base station regarding the malfunction was well known in the art, as taught by Criss.

Criss further discloses the feature by a base station (28) and generating and

transmitting an indication to the portable device (36) (see col. 6, lines 60-67; col. 7, lines 24-

60; Figs. 1-2, 12), where the host computer detects that the mobile terminal is using an older

version of operating software and transmits a request via the base station to the mobile

terminal for an upgrade.

Therefore, it would have been obvious to one of ordinary skill in the art at the time

the invention was made to combine the teachings of Fette, Kirkpatrick, Moles, and Criss to

have the feature generating and transmitting an indication to the portable device from the

base station regarding the malfunction, in order to have software upgrades that are wirelessly

transmitted to a mobile device based on a determination of whether such an upgrade is

necessary, as taught by Criss (see col. 2, lines 55-58).

Regarding **claim 43**, the combination of Fette, Kirkpatrick, and Moles discloses every

limitation claimed as applied above in claim 8. Fette does not specifically disclose having

the feature including diagnosing the malfunction in response to booting the portable device.

However, the examiner maintains that the feature including diagnosing the malfunction in

response to booting the portable device was well known in the art, as taught by Criss.

Criss further discloses the feature including diagnosing the malfunction in response to

booting the portable device (see col. 6, lines 60-67; col. 7, lines 24-60; Figs. 1-2, 12), where

the mobile terminal goes through a boot-up routing or initialization in which the host

computer detects that the mobile terminal is using an older version of operating software and

transmits a request via the base station to the mobile terminal for an upgrade.

Therefore, it would have been obvious to one of ordinary skill in the art at the time

the invention was made to combine the teachings of Fette, Kirkpatrick, Moles, and Criss to

have the feature including diagnosing the malfunction in response to booting the portable

device, in order to have software upgrades that are wirelessly transmitted to a mobile device

based on a determination of whether such an upgrade is necessary, as taught by Criss (see

col. 2, lines 55-58).

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Fette et al.**

(hereinafter Fette) **(US 6,052,600)** in view of **Kirkpatrick (US 5,933,776)**, **Moles et al.**

(hereinafter Moles) **(US 2002/0072359 A1)**, and **Criss et al.** (hereinafter Criss) **(US**

6,735,434 B2) as applied to claim 39 above, and further in view of **Sharma et al.** (hereinafter

Sharma) **(US 6,766,165 B2)**.

Regarding **claim 40**, the combination of Fette, Kirkpatrick, Moles, and Criss

discloses every limitation claimed, as applied above (see claim 39), in addition Fette further

discloses establishing a connection (105) between the base station (106) and the portable

device (200) (see Fig. 1). The combination of Fette, Moles, and Criss does not specifically

disclose having the feature secure connection. However, the examiner maintains that the

feature secure connection was well known in the art, as taught by Sharma.

In the same field of endeavor, Sharma discloses the feature secure channel which

reads on the claimed "connection" (see col. 4, lines 38-43; col. 5, lines 1-7; abstract; Fig. 1).

Therefore, it would have been obvious to one of ordinary skill in the art at the time

the invention was made to combine the teachings of Fette, Kirkpatrick, Moles, Criss, and

Sharma to have the feature secure connection, in order to have flexibility and mobility of a

network manager such as an administrator or a technician to manage and troubleshoot

problems on a network, as taught by Sharma (see col. 3, lines10-13; col. 4, lines 34-38).

Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Fette et al.** (hereinafter Fette) **(US 6,052,600)** in view of **Kirkpatrick (US 5,933,776)**, **Moles et al.** (hereinafter Moles) **(US 2002/0072359 A1)**, and **Criss et al.** (hereinafter Criss) **(US 6,735,434 B2)** as applied to claim 8 above, and further in view of **Imamatsu (US 6,687,901 B1)**.

Regarding **claim 46**, the combination of Fette, Kirkpatrick, Moles, and Criss discloses every limitation claimed as applied above in claim 8. The combination of Fette, Kirkpatrick, Moles, and Criss does not specifically disclose having the feature further comprising prompting a user to couple the portable device to a battery charger prior to the request for the configuration information to executing one or more instructions on the portable device to receive the configuration information. However, the examiner maintains that the feature further comprising prompting a user to couple the portable device to a battery charger prior to the request for the configuration information to executing one or more instructions on the portable device to receive the configuration information was well known in the art, as taught by Imamatsu.

Imamatsu further discloses the feature further comprising prompting a user to couple the portable device (10) to a battery charger prior to the request for the configuration information to executing one or more instructions on the portable device to receive the configuration information (see col. 9, lines 12-30; Figs. 2-3 and 7-8), where the update is performed according to the condition of the battery such as the mobile device (10) connected to a charger.

Therefore, it would have been obvious to one of ordinary skill in the art at the time

the invention was made to combine the teachings of Fette, Kirkpatrick, Moles, Criss, and

Imamatsu to have the feature further comprising prompting a user to couple the portable

device to a battery charger prior to the request for the configuration information to executing

one or more instructions on the portable device to receive the configuration information, in

order to update software efficiently and safely with a simple structure and control in a radio

terminal device, as taught by Imamatsu (see col. 2, lines 10-14).

Response to Arguments

6.   Applicant's arguments filed 14 August 2007 have been fully considered but they are

not persuasive.

The Examiner respectfully disagrees with applicant's arguments as the applied

reference(s) provide more than adequate support and to further clarify (see the above claims

and comments in this section).

7.   In response to applicant's arguments against the references individually, one cannot

show nonobviousness by attacking references individually where the rejections are based on

combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In

re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Regarding applicant's argument of claim 1 on pg. 6, 2nd paragraph, "...does not meet

the substance of the claims...", the Examiner respectfully disagrees. Applicant has failed to

appreciate the combined teachings of well-known prior art Fette, Webster, Kirkpatrick, and

Imamatsu that clearly discloses the claimed feature(s) as would be clearly recognized by one

of ordinary skill in the art. In particular, Kirkpatrick discloses the feature(s) further discloses

the feature based upon detection of a problem with the portable device (e.g., cellular

telephone) by the base station (14) (see col. 5, lines 1-7,9-16), where the base station includes

a test device for determine faults of a cellular telephone. As further support in the same field

of endeavor, Imamatsu discloses the feature(s) the CPU (22) which reads on the claimed

"control unit" to execute the configuration application to determine whether configuration of

the mobile terminal device (10) which reads on the claimed "portable device" is desired in

response to an indication received from a base station (103) based upon detection of a

problem with the portable device by the base station (103) (see col. 4, lines 10-17,43-47; col.

9, lines 40-48; col. 12, lines 38-45; Figs. 2-3 and 4), where the software-supply device (50)

via the base station (103) determines the mobile device (10) does not have the latest software

version in which where the software supply device determines whether an update is

necessary and transmits the software via the base station (103) to the mobile terminal (10) for

an upgrade (see col. 4, lines 21-25; col. 9, lines 6-12,40-48,52-56; col. 8, lines 1-8,19-22;

Figs. 2-3 and 7-8). Therefore, the combination(s) of the reference(s) Fette, Webster,

Kirkpatrick, and Imamatsu as addressed above more than adequately meets the claim

limitations.

8.   Regarding applicant's argument(s) of claim(s) 8, the claim is addressed for the same

reasons as set forth above and as applied above in each claim rejection.

Conclusion

9.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until

after the end of the THREE-MONTH shortened statutory period, then the shortened statutory

period will expire on the date the advisory action is mailed, and any extension fee pursuant to

37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

10.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Willie J. Daniel, Jr. whose telephone number is (571) 272-

7907. The examiner can normally be reached on 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Charles Appiah can be reached on (571) 272-7904. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published

applications may be obtained from either Private PAIR or Public PAIR. Status information

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access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-

9197 (toll-free). If you would like assistance from a USPTO Customer Service

Representative or access to the automated information system, call 800-786-9199 (IN USA

OR CANADA) or 571-272-1000.

/WJD,JR/

WJD,JR
15 October 2007

CHARLES N. APPIAH
SUPERVISORY PATENT EXAMINER